

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MATTHEW UNDERWOOD,)
)
)
Petitioner,)
v.) Civil Action
)
) No. 09-3196-CV-S-DGK-H
MARTY C. ANDERSON, Warden,)
United States Medical Center for)
Federal Prisoners,)
)
)
Respondent.)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate formerly confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges the underlying charges in his criminal case. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are not properly before this Court, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner attacks the merits of his underlying criminal case, including the lawfulness of the search of his home, the frivolousness of the indictment, the effectiveness of counsel, and the integrity of the prosecutor. He requests that all criminal charges against him be dismissed. After a Show Cause Order, a response was filed. Counsel for petitioner thereafter filed a Motion to Withdraw and Suggestions, addressing the issues petitioner raised in his original petition. Petitioner was afforded additional time to file a pro se traverse, which he did not do.

A review of the file and records in the case indicates that petitioner was confined in this

district for a court-ordered psychiatric evaluation. According to counsel for petitioner, he filed this petition while waiting to be transferred back to the Southern District of Mississippi, the charging district. He has now been transferred back to Mississippi to face the underlying charges. The claims he raised in this petition clearly concern substantive allegations in his criminal case, and he is now litigating those issues in the charging district. Accordingly, because there are no issues raised that are properly before this Court, it must be recommended that the petition herein for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
Chief United States Magistrate Judge

Date: 11/23/09

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the Chief United States Magistrate Judge.